***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

WRIT PETITION Nos. 25423, 25878, 25879, 25880, 25881, 25882, 25883, 25884, 25885, 25886, 25887, 25888, 25890, 25891, 25892, 25893, 25894, 25895, 25896, 25897, 26262, 26689, 26690, 26691, 26692, 26693, 26694, 26695, 26696, 26697, 26698, 26699, 26700, 26701, 26702, 26703, 26704, 26705, 26706, 26707, 26708, 26709, 26710, 26711, 26999, 27000, 27326, 27327, 27328, 27329, 27330, 27331, 27332,

27333, 27334 and 27335 OF 2005

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% 3.01.2006

Between:

National Textile Corporation & Others

…Petitioners

And

Vemula Lingaiah & others

…Respondents

! COUNSEL FOR PETITIONER: Mr.P.Kamalakar

^ COUNSEL FOR RESPONDENTS: G.P. for Labour Mr.M.Venkata Rama Rao.

< Gist:

> Head Note:

? CITATIONS:

1. 980 LAB-I-C-1084

2. 1990 LAB-I-C-614

3. 2001 SCC (L&S) 105

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27333, 27334 and 27335 OF 2005

Dated 3rd January 2006

Between:

National Textile Corporation & Others

…Petitioners

And

Vemula Lingaiah & others

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.25423 OF 2005 & Batch

COMMON ORDER:

This batch of writ petitions is filed against a common order dated 5.9.2005, passed

by the Industrial Tribunal-cum-Labour Court, Warangal. Through the order under challenge, the Labour Court disposed of 21 applications filed under Section 33-C (2) of the Industrial Disputes Act (for short "the Act"). In each of such applications, 32 individuals, claiming to be the former employees of the Ajam Jahi Mills Limited, Warangal, the second petitioner herein, (hereinafter referred to as the Mill), claimed the relief, in relation to payment of amounts, under Voluntary Retirement Schemes (VRS), introduced and enforced in the year 1992.

The second petitioner is a Textile Mill, which has been taken over, long back, by the National Textile Corporation, the first petitioner herein. In the 1992, the petitioners introduced one scheme for voluntary retirement of permanent workmen, and another for Badili/Temporary/Casual employees. The schemes provided for payment of ex-gratia, at certain rates, over and above the gratuity. Different categories of workmen, and in some cases, their dependants, filed applications in the year 2004, before the Labour Court, alleging that the benefits under the VRS were not properly extended to them. The grievances ranged from the alleged defective calculation of the total period of service, to the computation of respondents' working days, for each year. The respondents have also made claims in relation to the payment of gratuity.

The petitioners opposed the claim of the respondents. The main contentions advanced on their behalf were that gratuity cannot be subject matter of proceedings under the Act, the claims of the respondents are belated, and that even otherwise they cannot be dealt with, under Section 33-C (2) of the Act. It was also pleaded that the Mill became defunct, and its financial condition is very unsound. It was urged that the claims of the employees, who retired before introduction of the VRS, ought not to have been entertained by Labour Court. The plea of estoppel was also raised against the respondents.

Through the order under challenge, the Labour Court partly allowed the applications filed by the respondents, and directed payment of differential amounts of gratuity and ex-gratia. It did not maintain any clear distinction between the regular and Badili employees.

Sri E.Manohar, learned Senior Counsel, appearing for the petitioners, submits that the Labour Court entertained several claims, which were clearly barred by law and totally out side the scope of Section 33 (C) (2) of the Act. He contends that there was no justification for the Labour Court, in entertaining the claims of some of the employees, who retired, before the introduction of VRS. Learned Senior Counsel points out that the Payment of Gratuity Act (for short "the Gratuity Act") is a self-contained Code, and any complaints in relation to payment of gratuity, ought to have been agitated, before the authority under the said enactment, and not before the Labour Court. He submits that the respondents have received the benefits under the VRS, without any demur, and they were estopped from submitting applications under Section 33-C (2) of the Act, that too 12 years after their retirement. He takes exception to the procedure adopted by the Labour Court.

Sri M. Venkata Rama Rao, learned counsel for the respondents, on the other hand, submits that once the petitioners have introduced the VRS, providing for certain benefits, they were under obligation to implement the same, in its letter and spirit. He contends that the question as to whether the respondents were entitled to the actual benefits under the VRS, or any dispute as to its purport, can certainly constitute the subject matter of the application under Section 33-C(2) of the Act. Learned counsel submits that though some amount of gratuity is involved in the matter, the same came to be dealt with as a benefit under the VRS, and in that view of the matter, it was not necessary for the respondents, to approach the authority under the Gratuity Act. As regards the plea of estoppel, learned counsel for the respondents, submits that no workman can be denied what is due to him, under the law, on the sole ground that there was no demur, when he retired from service, or that the demur was not so vehement.

The Mill was taken over by the first petitioner, about two decades ago. Few years thereafter, the Mill became sick and defunct. The petitioners introduced two categories of VRS. The one introduced on 4.7.1992, was for the benefit of permanent workmen. Clause 3 thereof, reads as under:

> "Permanent employees who opt for the scheme shall be entitled for an ex-gratia amount over and above the gratuity as per the Act, equivalent to 1½ months wages for each completed year of continuous service or the wages that the workmen will earn for the remaining period of service at the rate of

present wages, calculated till the end of their service whichever is less."

Apart from permanent workmen, those with uncertain and temporary tenure, called Badili Employees were also working in the Mill. For them, a different kind of VRS was introduced on 11.12.1992. While in the case of permanent workers, the ex-gratia was payable at the rate of 1½ months for each completed year of service, in case of Badili employees, the ex-gratia was restricted to 15 days of wages for each year of completed service. The year of service for Badili employees was defined, as the one in which the workmen had attended the mill for 240 days. Clause 3 of the Scheme reads as under:

> "Badili/Temporary/Casual employee who opt for the scheme shall be entitled for an ex-gratia amount over and above the gratuity as per the Act equivalent to 15 days wages for each completed year of continuous service or the wages that the workmen will earn for the remaining period of service at the rate of present wages calculated till the end of their service whichever is less. In case of quantum of
> ex-gratia is increased at a later date by the Government of India, the same will be extended to workers who have availed V.R.S. as per this Scheme. During the Badili/Temporary/Casual period of service, ex-gratia payment will be taken for those years in which the employee has attended the Mills for 240 days."

Applications under Section 33-C(2) of the Act were filed before the Labour Court in a bunch of 21 cases, and in each of it, 32 individuals figured, as applicants. Almost a uniform pattern was adopted for all of them. The individual claims were filed as annexure to the concerned applications. A typical annexure comprises of the particulars of service of the applicant. The claim was made for the period of service, rendered by the concerned applicant, as well as for the left over period. In addition to that, an equal amount for both the periods was also claimed. For example, for a workman, by name Mogili, who was said to have born in 1952, and was 40 years of age, by the time he retired under VRS, the claim was as under:

Compensation for 14 years of service …… 33,516-00

rendered by him

Compensation for left over service …… 30,780-00

of 18 years (58-40)

64,296-00

Ex-gratia at 100% …… 64,296-00

Last Drawn Pay …… 7,182-00

Total amount claimed …… 1,35,774-00

Same was the pattern of claims of all other respondents.

The petitioners raised serious objection, as to the maintainability of claims. According to them, the claims were not supported by proper material. It was pleaded that the claim as to the gratuity, and the interpretation of VRS are outside the scope of Section 33-C(2) of the Act. Grounds, such as, the second petitioner being the subject matter of proceedings before the BIFR, its having been closed, etc., were also urged.

The Labour Court framed for itself, the following points:

1. Whether the petition is not maintainable under Section 33(C)(2) of I.D.Act?
2. Whether the petition is barred by time?
3. Whether the petitioners are estopped from claiming the amounts?
4. Whether petitioners are not entitled to claim the amounts as the mill has been closed down?
5. Whether the petition is liable to be dismissed, since the respondent is in financial crisis?
6. Whether the computation of total services made by the respondent is correct or not?

Before the Labour Court, no witnesses were examined, either on behalf of the

respondents, or on behalf of the petitioners. The only documents that were marked for the respondents were their identity cards and their individual particulars. On behalf of the petitioners herein, some documents, which were copies of calculation sheet and attendance particulars of some of the workmen, were filed.

After undertaking discussion on these aspects, it disposed of all the applications, through a common order.

As regards the maintainability of application under Section 33-C(2) of the Act, the contention urged on behalf of the petitioners was two-fold. The first is that the claim for gratuity cannot be dealt with under an application filed under Section 33-C(2) of the Act; and the second was that the proceedings under that provision, being in the form of execution applications, the claim under VRS could not have constituted their subject matter. The Labour Court did not undertake any discussion on the first part of it. It can be said to have impliedly overruled it, inasmuch as the claim was admitted for differential amount of gratuity.

The Gratuity Act is a self-contained Code. Apart from placing obligation on an employer, to pay gratuity to the employees under Section 4 of that Act, it requires the appropriate Government and the controlling authority constituted by it, under Section 3 thereof, to ensure that an employer discharges his obligation under the Act. Section 8 of the Gratuity Act prescribes the procedure for recovery of gratuity, if it is not paid, either in whole, or in part, by the employer. The competent authority is conferred with the power, to examine the claim and to issue a certificate, for the amount found to be due. The amount covered by such a certificate shall be recovered by the Collector, as if it is arrears of land revenue. In ***STATE OF PUNJAB v. LABOUR COURT, JALLUNDOR & OTHERS***, the Supreme Court held that a workman cannot approach the Labour Court, for payment of gratuity, and he has to approach the Officer, designated under the Gratuity Act. The same was followed by this Court in ***D.K.SAVITRAMMA v. ANANTHAPUR DISTRICT COOPERATIVE CENTRAL BANK, ANANTHAPUR***. In that view of the matter, the order passed by the Labour Court, insofar as it directed payment of amount towards difference of gratuity, to the respondents herein, cannot be sustained.

Coming to the objection, as to whether the benefits under VRS can be claimed by filing an application under Section 33-C(2) of the Act, it is beneficial to have a look at that provision. It reads as under:

> "**Sec.33-C(2)**:Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.
>
> Provided that where the Presiding Officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

A reading of the provision indicates that the Labour Court is conferred with the power to decide the question relating to the entitlement of the workman, to receive the money due, or to receive any benefit, which is capable of being computed in terms of money. It contemplates a pre-existing right in the workman, to receive the same. In adjudication under this provision, it is not in relation to the right that gives rise to the entitlement for money or benefit, but as regards the entitlement flowing out of such right. In other words, there must not exist any dispute, as to the existence of a right. Such right may have existed, by operation of a provision of law, as a result of an adjudication by a Court, or on the basis of a settlement or agreement between the parties. Broadly, the proceedings under this provision can be compared, to the steps in execution. However, one cannot insist that there must have been a prior adjudication by the Labour Court itself, before an application under Section 33-C(2) of the Act is filed. It would be sufficient if there existed legal basis for the entitlement, in form of a scheme, adjudication or settlement.

In the instant case, the petitioners introduced two separate schemes for voluntary retirement. Though the Labour Court cannot go into the legality or correctness of the terms of VRS, it can certainly entertain an application under Section 33-C(2) of the Act, to ensure that the scheme is implemented in its letter and spirit. The view taken by the Labour Court, that the instant applications were maintainable, accords with settled principles of law.

On the question of limitation, the Labour Court undertook extensive discussion. Section 33-C(2) of the Act prescribes time within which the application made by workman has to be disposed of, and it does not prescribe any limitation, within which the application must be made. It is true that stale claim cannot be entertained

by courts, simply because there is no prescription, as to limitation. It must not be forgotten that any benefit of doubt, in this regard, was always extended in favour of the workman. In ***GURMAIL SINGH v. PRINCIPAL, GOVERNMENT COLLEGE OF EDUCATION***, the Supreme Court held that even belated claims can be entertained, but the delay must be taken into account, while moulding the relief. The other objections raised by the petitioners, touching upon their financial capacity of the Mill and the fact that it was closed, cannot be accepted, if there exists any liability against them under the law.

A perusal of the record discloses that the Labour Court did not make any effort to differentiate the claims of different categories of employees. It is not in dispute that the respondents included the persons, who retired before the introduction of VRS, the permanent workmen, and Badili employees. It is not indicated as to how the claims of the persons, who retired from service before the VRS was introduced, are covered by the scheme. When the very purport of the applications is to enforce the rights under the VRS, there was no basis for entertaining the claims of persons, who retired, before it was introduced.

The entitlement of permanent employees is different from those of the Badili employees. The purport of the respective claims is also required to be different. The manner of computing the years of service, varies from each other. Therefore, the Labour Court ought to have dealt with these two categories of cases, separately.

Another area of controversy is as to the manner in which year of continuous service shall be reckoned, in respect of Badili employees. Under the VRS introduced for that category of employees, the petitioners have categorically indicated that it must be the year, in which employee has attended the mill for 240 days. When the scheme mandates that it must be the attendance by the employees for 240 days, much more material was required, for inclusion of weekly offs and public holidays. At any rate, the question as to whether 240 days stipulated under the VRS must include weekly offs and public holidays, cannot constitute the subject matter of a claim under Section 33-C(2) of the Act. As observed earlier, it is only the consequences flowing from out of a right that can be decided under that provision, and not the right itself. If the workmen feel aggrieved by the manner in which the year is reckoned, they have to raise the dispute under Section 10 of the Act.

For the foregoing reasons, the common order dated 5.09.2005, passed in the

applications filed under Section 33-C(2) of the Act, is set aside, and the matter is remanded to the Labour Court, directing that;

a. the learned Presiding Officer of the Labour Court shall separate the cases of the different categories of employees, such as, the employees who have retired from service, before the introduction of the VRS, the regular employees and Badili employees, and shall deal with their claims, separately.

b. The claims of the workmen, regarding payment of difference of gratuity, shall not be dealt with by the Labour Court.

c. The Labour Court shall reckon the year of service for the Badili employees, as the one in which the workman has attended for 240 days, and in case, they intend that the weekly offs and public holidays must also be included, it must be left to them to pursue their remedies under Section 10 of the Act.

There shall be no order as to costs.

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(**L.NARASIMHA REDDY, J)**

Dt. 3rd January 2006

Note:

L.R. copy to be marked.

(B/O) PAN